



NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 18-25410-B-13
)
NEAL RUSSELL BASSETT and) DC No. FF-1
LOURDES CRUZ BASSETT,)
)
Debtor(s).)

In re:) Case No. 18-27062-B-13
)
ASHLEY KRISTINE-LOUISE SOLBERG,) DC No. MG-1
)
Debtor(s).)

In re:) Case No. 18-27132-B-13
)
STUART LEE KOPPLE,)
)
Debtor(s).)

In re:) Case No. 18-27143-B-13
)
TYRONE LIEF DAMON and REBECCA) DC No. PGM-2
JOYCE DAMON,)
)
Debtor(s).)

MEMORANDUM DECISION

Introduction

There are several motions to value collateral before the court. The motions are filed in separate Chapter 13 cases. The collateral involved in the motions are vehicles. All motions are

1 brought under 11 U.S.C. § 506(a),¹ and Federal Rule of Bankruptcy
2 Procedure ("Bankruptcy Rule") 3012.²

3 The court has reviewed each motion and its related exhibits
4 and declarations. The court has also reviewed supplemental
5 briefs filed in the Damon and Solberg cases identified below.
6 And the court has reviewed and takes judicial notice of the
7 docket in each of the referenced Chapter 13 cases.

8 A consolidated hearing was held on January 29, 2019.
9 Appearances were noted on the record. At the conclusion of the
10 hearing one motion was granted, one motion was denied without

11 ¹Section 506(a) states in relevant part as follows:

12 (a) (1) An allowed claim of a creditor secured by a lien on
13 property in which the estate has an interest . . . is a
14 secured claim to the extent of the value of such creditor's
15 interest in the estate's interest in such property . . . and
16 is an unsecured claim to the extent that the value of such
17 creditor's interest . . . is less than the amount of such
18 allowed claim. Such value shall be determined in light of
19 the purpose of the valuation and of the proposed disposition
20 or use of such property, and in conjunction with any hearing
21 on such disposition or use or on a plan affecting such
22 creditor's interest.

23 (2) If the debtor is an individual in a case under chapter 7
24 or 13, such value with respect to personal property securing
25 an allowed claim shall be determined based on the
26 replacement value of such property as of the date of the
27 filing of the petition without deduction for costs of sale
28 or marketing. With respect to property acquired for
personal, family, or household purposes, replacement value
shall mean the price a retail merchant would charge for
property of that kind considering the age and condition of
the property at the time value is determined.
11 U.S.C. § 506(a).

²Bankruptcy Rule 3012 states in relevant part as follows:

24 (a) On request by a party in interest and after
25 notice—to the holder of the claim and any other entity
26 the court designates—and a hearing, the court may
27 determine:

28 (1) the amount of a secured claim under § 506(a) of
the Code[.]
Fed. R. Bankr. P. 3012(a) (1).

1 prejudice, and two motions were continued to February 12, 2019,
2 to permit the filing of amended or supplemental declarations.³
3 This memorandum decision memorializes and supplements the court's
4 oral findings of fact and conclusions of law stated on the record
5 in open court. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P.
6 7052, 9014(c). To the extent this memorandum decision conflicts
7 with any findings of fact and/or conclusions of law stated on the
8 record, this memorandum decision controls. See Playmakers LLC v.
9 ESPN, Inc., 376 F.3d 894, 896 (9th Cir. 2004) (citation omitted).

10
11 Background

12 The debtor in In re Solberg, 18-27062, moves to value the
13 collateral of Travis Credit Union. The collateral is a 2013 Ford
14 Fusion. Debtor values the vehicle at a replacement value of
15 \$9,793.00. Debtor's valuation is based on her opinion stated in
16 a declaration. The motion is unopposed. The creditor filed
17 proof of claim no. 2 which states a balance owed of \$14,897.48
18 and a value of the vehicle of \$14,897.48. This motion was
19 ordered granted on January 29, 2019.

20 The debtor in In re Kopple, 18-27132, moves to value the
21 collateral of United Auto Credit Corp. The collateral is a 2005
22 Acura DMX. Debtor values the vehicle at \$366.00. Debtor's
23 valuation is based on his opinion stated in a declaration formed
24 after consulting Kelley Blue Book and Edmunds. The Chapter 13
25 trustee filed a response noting that the creditor filed proof of

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27 ³One motion was subsequently withdrawn. See, infra.

1 claim no. 1 which states a balance owed of \$5,625.03 and values
2 the vehicle at \$6,250.00. This motion was ordered denied without
3 prejudice on January 29, 2019.

4 The debtors in In re Damon, 18-27143, move to value the
5 collateral of Safe Credit Union. The collateral is a 2011 Toyota
6 Rav4 SUV. Debtors value the vehicle at a replacement value of
7 \$4,000.00. Debtors' valuation is based on their opinion stated
8 in an amended declaration. The motion is unopposed. The
9 creditor filed proof of claim no. 12 which states a balance owed
10 of \$7,060.77 and a value of the vehicle at \$6,000.00. This
11 motion was heard on January 29, 2019, and continued to February
12 12, 2019. It was ordered granted on February 12, 2019.

13 The debtors in In re Bassett, 18-25410, move to value the
14 collateral of Santander Consumer USA. The collateral is a 2012
15 Mercedes-Benz M-Class. Debtors value the vehicle at a
16 replacement value of \$24,247.00. Debtors' valuation is based on
17 their opinion stated in a declaration formed after consulting
18 kbb.com. The motion is unopposed. The creditor filed proof of
19 claim no. 4 which states a balance owed of \$41,703.41 and a value
20 of the vehicle at \$21,375.00. This motion was heard on January
21 29, 2019, and continued to February 12, 2012. It was withdrawn
22 on February 5, 2019.

23
24 Discussion

25 The issue as it relates to each of the remaining motions to
26 value referenced above is the same: Does the evidentiary
27

1 presumption of Bankruptcy Rule 3001(f) apply to the value of the
2 collateral stated in the secured creditor's proof of claim,⁴ and
3 if so, does that evidentiary presumption of value carry forward
4 and apply to a motion to value the secured creditor's collateral
5 brought under § 506(a) and Bankruptcy Rule 3012? This appears to
6 be a matter of some debate.

7 This court has previously cited In re Roberts, 210 B.R. 325
8 (Bankr. N.D. Iowa 1997), for the proposition that the value of a
9 secured creditor's collateral stated in its proof of claim is
10 presumptively valid under Bankruptcy Rule 3001(f) and that
11 presumptively valid value applies when the debtor (or someone
12 else) moves under § 506(a) and Bankruptcy Rule 3012 to value the
13 secured creditor's collateral. In Roberts, the parties disputed
14 the valuation of collateral at a Chapter 13 confirmation hearing,
15 causing the court to set the matter for an evidentiary hearing to
16 address the value. Id. at 327. Based on the validly-filed proof
17 of claim, the court concluded that the debtor had the burden of
18 coming forward with sufficient evidence to rebut the Bankruptcy
19 Rule 3001(f) presumption. Id. at 328. The evidence before the
20 court (despite the requirement by that court's local rule that
21 the parties submit appraisals prior to the hearing) was the
22 debtor's unverified affidavits and inadmissible hearsay versus
23 the creditor's proof of claim based on a NADA Blue Book report.

25
26 ⁴Bankruptcy Rule 3001(f) states that "[a] proof of claim
27 executed and filed in accordance with these rules shall
constitute prima facie evidence of the validity and amount of the
claim." Fed. R. Bankr. P. 3001(f).

1 Id. at 328, 330. On that record, and in light of the burden of
2 proof, the court found that the debtor did not rebut the prima
3 facie validity of the proof of claim, including the value of the
4 secured creditor's collateral stated in the proof of claim. Id.
5 at 328-31; see also In re Spraggins, 316 B.R. 317, 319 (Bankr.
6 E.D. Wis. 2004) (applying Roberts).

7 More recently, citing Bankruptcy Rule 3001(f) and § 502(a),⁵
8 the Third Circuit in In re Heritage Highgate, Inc., 679 F.3d 132
9 (3rd Cir. 2012), concluded that the presumption of validity given
10 a proof of claim applies to the value of a secured creditor's
11 collateral stated in the proof of claim and that evidentiary
12 presumption applies when the collateral is valued under § 506(a)
13 and Bankruptcy Rule 3012. Id. at 140.

14 EvaBank v. Baxter, 278 B.R. 867 (N.D. Ala. 2002), falls
15 along the same line as Heritage Highgate. EvaBank involved a
16 post-confirmation evidentiary hearing of a vehicle in a Chapter
17 13 case in which the vehicle's value stated on the secured
18 creditor's proof of claim and the Black Book valuation presented
19 by the creditor at the hearing were weighed against the debtor's
20 declaration of value. Id. at 872. Disagreeing with the
21 bankruptcy court's ultimate mid-point valuation of the vehicle
22 following an evidentiary hearing, the creditor with a lien on the
23 vehicle appealed. Id. at 874.

24
25 ⁵Section 502(a) states that "[a] claim or interest, proof of
26 which is filed under section 501 of this title, is deemed
27 allowed, unless a party in interest, including a creditor of a
general partner in a partnership that is a debtor in a case under
chapter 7 of this title, objects[.]" 11 U.S.C. § 502(a).

1 On appeal the district court stated that the initial hurdle
2 the debtor faced to substantiate her value of the vehicle was the
3 "evidentiary state of [the creditor's unobjected-to proof of]
4 claim constituting prima facie evidence of the extent of its
5 secured status." Id. at 878. The court also noted that the
6 debtor's affidavit suffered from substantial defects making it an
7 evidentiary nullity and therefore insufficient to overcome the
8 presumptive validity of the collateral's value as stated in the
9 creditor's proof of claim. Id. at 878-79. The court further
10 explained:

11 The upshot of all this is that even after Debtor
12 objected to [creditor's] secured claim by use of the
13 Motion to Determine Value, what the Bankruptcy Court
14 had in front of it was [creditor's] deemed allowed
15 claim constituting prima facie evidence of its secured
16 status, versus an objection supported by no evidence.
17 Given this state of evidentiary affairs, [creditor] was
18 entitled to prevail on valuation without having to put
19 on any additional evidence. . . . [Creditor] need not
20 have done anything to overcome the non-existent
21 evidence supplied by Debtor. *In this case, [creditor]
22 had met its burden of proof of the value of its secured
23 claim by the prima facie and un rebutted status of its
24 proof of claim.*

25 Id. at 879 (emphasis added).

26 There is also one published Eastern District of California
27 bankruptcy court opinion relevant to this issue. Commenting on
28 the evidentiary presumption of a properly-filed proof of claim in
the context of § 506(a), the court in In re Serda, 395 B.R. 450,
454 (Bankr. E.D. Cal. 2008), stated: "The debtor bears the
initial burden of proof of overcoming any presumption established
by the stated value in the secured creditor's proof of claim."

1 Id. at 454 (citation omitted).⁶ That point from Serda was
2 subsequently followed in at least one unpublished bankruptcy
3 court decision from the Northern District of California. See In
4 re Flores, 2012 WL 124973 (Bankr. N.D. Cal. 2012).

5 This court's concern with the approach taken in the
6 foregoing decisions is that they appear to conflate, and
7 therefore do not recognize, the distinction between the claims
8 allowance process under § 502(a) and Bankruptcy Rule 3001(f) and
9 the claims *bifurcation and valuation* process under § 506(a) and
10 Bankruptcy Rule 3012. These are separate and distinct processes.
11 In re Alewelt, 520 B.R. 704, 709 (Bankr. C.D. Ill. 2014) ("[T]he
12 determination of the secured status of a claim is governed by
13 § 506(a), which is not part of the claims allowance process[.]");
14 In re Duggins, 263 B.R. 233, 238 (Bankr. C.D. Ill. 2001) ("The
15 bifurcation or valuation process contemplated by 11 U.S.C.
16 § 506(a) is not properly part of the claims allowance process.");
17 In re Hudson, 260 B.R. 421, 431 (Bankr. W.D. Mich. 2001) ("[I]t
18 is a misconception for such a creditor to expect that filing a
19 claim establishes the merit and sufficiency of an asserted value
20 of collateral [under § 506(a).]").

21 Whereas the claims allowance process under § 502(a) and
22 Bankruptcy Rule 3001(f) establishes the existence of the debt and
23 an entitlement to payment, the valuation and bifurcation process
24 under § 506(a) and Bankruptcy Rule 3012 determines how the
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26 ⁶It is worth noting that the court in Serda did not rely on
27 an estimated value in the proof of claim filed because none was
included on the proof of claim. Serda, 395 B.R. at 453 n.4.

1 established debt is to be paid and treated under the Bankruptcy
2 Code. Alewelt, 520 B.R. at 709-10; In re Morales, 520 B.R. 544,
3 550 (Bankr. W.D. Tex. 2014). Indeed, this view is consistent
4 with Chagolla v. JP Morgan Chase Bank, N.A. (In re Chagolla), 544
5 B.R. 676 (9th Cir. BAP 2016), in which the Ninth Circuit
6 Bankruptcy Appellate Panel stated that the primary purpose of §
7 506(a) "is to classify allowed claims as either secured or
8 unsecured, which in turn affects how the bankruptcy code treats
9 them." Id. at 680.

10 In this court's reconsidered view, the approach that
11 recognizes the claims allowance process and the claims valuation
12 and bifurcation process as separate and distinct processes is the
13 better and better-reasoned approach. Therefore, the court holds
14 that the evidentiary presumption of Bankruptcy Rule 3001(f) does
15 not apply to a motion to value collateral brought under § 506(a)
16 and Bankruptcy Rule 3012 because that presumption is limited to
17 the claims allowance process and within that process applies only
18 to the "validity" and *unbifurcated* claim "amount" as stated by
19 the plain language of the rule. Alewelt, 520 B.R. at 709;
20 Morales, 520 B.R. at 550; Duggins, 263 B.R. at 238; Hudson, 260
21 B.R. at 430-31. Several additional considerations support this
22 conclusion.

23 First, this approach preserves the court's fact-finding
24 function in the valuation process. That necessarily includes
25 assessing and weighing evidence of a collateral's condition and
26 value based on a debtor's testimony as the owner of the

1 collateral versus a mechanical application of value likely
2 assigned by an individual processing a proof of claim with no
3 familiarity with the collateral's condition. It also provides
4 the court with flexibility in the valuation process as § 506(a)
5 contemplates.

6 Second, not mechanically applying the Bankruptcy Rule
7 3001(f) presumption to value in the context of a § 506(a) and
8 Bankruptcy Rule 3012 motion also avoids delays in the
9 confirmation process for at least two reasons: (1) the debtor is
10 not put in a position of waiting for a proof of claim to be filed
11 before filing a motion to value; and (2) conversely, the absence
12 of a proof of claim may motivate the debtor to value the
13 collateral before a proof of claim is filed so that once valued
14 the amount of the allowed secured claim remains unaffected even
15 if the later-filed proof of claim asserts a higher value. See
16 Local Bankr. R. 3007-1(d)(7).⁷

17 Third, the separate process view eliminates the possibility
18 that a secured creditor may attempt to extract more from a debtor
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20
21 ⁷The local rule states as follows:
22 If the Court enters an order valuing a creditor's
23 collateral and the creditor has filed or later files a
24 proof of a secured claim in an amount greater than the
25 value established for the collateral, the allowed
26 secured claim shall be the value of the collateral
27 determined by the Court. It is unnecessary for the
28 trustee or the debtor to file a claim objection in
addition to the motion valuing the collateral. If the
creditor has filed or later files a proof of a secured
claim in an amount less than the value established for
the collateral, the allowed secured claim shall be the
amount claimed by the creditor.

Local Bankr. R. 3007-1(d)(7)

1 based on an unrealistic value or otherwise coerce a debtor to pay
2 a secured claim based on an unrealistic value of the collateral
3 under a threat of filing an artificially-inflated proof of claim.

4 That said, not every unopposed motion to value will be
5 granted. The debtor still has the initial burden of producing
6 some admissible evidence of value. In most cases, that may be
7 satisfied by a declaration that states the debtor's opinion of
8 value. See Fed. R. Evid. 701; Enewally v. Washington Mutual Bank
9 (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). And in
10 most cases, if unopposed, the court may accept the debtor's
11 opinion of value as conclusive. Enewally, 368 F.3d at 1173. But
12 as Enewally also notes, just as the court "may" accept the
13 debtor's opinion of value as conclusive in the absence of
14 contrary evidence the court also "may not" accept the debtor's
15 opinion of value even when no other evidence of value is
16 presented. For example, if the value stated in the declaration
17 is not credible or if the declaration suffers from an evidentiary
18 defect even an unopposed motion may be denied.

19
20 Conclusion

21 Turning now to the motions before the court, the motions to
22 value filed in the Solberg and Damon cases will be GRANTED. The
23 debtor(s) in those respective cases have submitted admissible
24 evidence of the respective collateral's value in the form of
25 their opinion stated in an admissible declaration. In the
26 absence of any opposition, and therefore evidence of value to the
27

1 contrary, the court exercises its discretion to accept each
2 debtor's opinion of value stated in the respective declarations
3 filed in the Solberg and Damon cases as conclusive. Therefore,
4 the debtor's vehicle in Solberg is valued at \$9,793.00 and the
5 debtors' vehicle in Damon is valued at \$4,000.00.

6 The motion to value in the Kopple case will be DENIED
7 WITHOUT PREJUDICE. The debtor's opinion of value in his
8 declaration is based on hearsay to the extent it relies on third-
9 party and industry resources. The debtor's opinion of value
10 stated in his declaration is also 5% of the value asserted in the
11 creditor's proof of claim and therefore is not credible.

12 The motion to value filed in the Bassett case is deemed
13 withdrawn.

14 A separate order in each case will issue.

15 Dated: February 26, 2019.

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18 UNITED STATES BANKRUPTCY JUDGE
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INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

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